

# **EXHIBIT 58**

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10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 SAN FRANCISCO DIVISION

13 WAYMO LLC,

14 Plaintiff,

15 vs.

16 UBER TECHNOLOGIES, INC.;  
17 OTTOMOTTO LLC; OTTO TRUCKING  
LLC,

18 Defendants.

CASE NO. 3:17-cv-00939

**PLAINTIFF WAYMO'S SUBMISSION TO  
SPECIAL MASTER COOPER  
REGARDING UBER'S OBLIGATION TO  
PRODUCE JACOBS LETTER AND  
RELATED DOCUMENTS**

Trial Date: February 5, 2018

1 would seem logical to me it did get printed somewhere.” (12/4/17 Hearing Tr., 17:15-21.)  
 2 Indeed, according to Ms. Padilla, the letter was “handed” over to others at Uber (*id.* at 15:16-24),  
 3 which suggests that the letter exists at Uber in hard copy. An electronic search protocol is  
 4 irrelevant to locating hard copy documents. If there are hard copies of the Jacobs letter or  
 5 resignation email, both of which are responsive to Waymo’s document requests, then Uber’s  
 6 arguments about search terms are moot. Uber has not yet confirmed whether hard copies exist. If  
 7 there were indeed hard copies of these documents responsive to Waymo’s RFPs, Uber was  
 8 obligated to produce them.<sup>3</sup>

9 With respect to electronic copies of the documents, the fact that the Jacobs letter and  
 10 resignation email would not have hit on negotiated search terms does not excuse Uber’s failure to  
 11 produce these known documents for several reasons. Initially, as the Special Master should recall,  
 12 the parties **never** entered into an agreement under which the parties agreed that they each only  
 13 needed to use search terms to try to locate responsive documents. Tellingly, Uber did not point  
 14 the Court to any such agreement at any of the recent hearings on this subject. Nor can it.

15 Search terms are intended to help parties search large volumes of ESI to find responsive  
 16 documents; they do not obviate a party’s discovery obligations once responsive documents are  
 17 already found. Once Uber and its senior management and counsel had actual knowledge of the  
 18 Jacobs documents and their relevance to this case, they should have produced them. Indeed,  
 19 courts have recognized that while search terms have a place in e-discovery, it is unreasonable for  
 20 parties to rely entirely on such terms in searching for and producing responsive information. *See*  
 21 *F.D.I.C. v. Baldini*, Case No. 1:12-cv-7050, 2014 WL 1302479, at \*2 (S.D. W. Va. Mar. 28, 2014)  
 22 (“If, however, a producing party is aware of a relevant document that is not triggered by the  
 23 application of the search terms, the producing party shall produce that document.”); *Moore v.*  
 24 *Publicis Groupe*, 287 F.R.D. 182, 190-91 (S.D.N.Y. 2012) (noting the limitations of key word  
 25 searches); *cf. Arthur v. Atkinson Freight Lines Corp.*, 164 F.R.D. 19, 20 (S.D.N.Y. 1995) (“[T]he  
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27 <sup>3</sup> Waymo notes that the definition of “DOCUMENTS” in its document requests included  
 28 documents in any medium, and so would call for both hard copy and electronic documents. (Ex.  
 3.)

1 DATED: December 5, 2017

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2  
3 By /s/ Charles K. Verhoeven

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